

III. THERE CAN BE NO FURTHER COMPROMISE OF INTERFERENCE-FREE RADIO SERVICE.

In reply comments filed by Amherst Alliance, it states that “most Low Power Radio activists do not ADVOCATE Digitalization – BUT they can ACCEPT it ... IF it is structured to “allow room” for a viable, meaningful Low Power Radio Service” and that “Digitalization and Low Power Radio CAN ‘co-exist’ IF conventional broadcasters and Low Power Radio broadcasters are both willing to ‘bend’.”⁷⁰ These statements presume that either IBOC systems can be designed around any LPFM service or that the elimination of third adjacent channel protections to make room for LPFM stations will not harm existing IBOC systems.⁷¹

The Commission also addresses this very issue in the *DAB Notice*. However, even if the Commission decides that third adjacent channel stations will not impact IBOC systems without waiting for any field testing to be completed, there remains a conflict regarding analog transmissions and third adjacent channels.

While the Commission assumes that elimination of third adjacent channel protection would “entail, at worst, little risk of interference to existing radio service,”⁷² the submitted receiver studies suggest differently. Due to the fact the Commission has already degraded the technical integrity of the FM band through its policy decisions, any new interference threatens to further reduce the service provided to the public without any adequate guarantee service will be replaced by LPFM stations.

⁷⁰ Reply Comments of the Amherst Alliance in MM Docket No. 99-25 at 8 (filed September 15, 1999).

⁷¹ The Commission assumes that third adjacent channel restrictions are not necessary for IBOC systems. See *LPFM Notice* at Appendix C; *DAB Notice* ¶ 25. Without field test data from whatever system may ultimately be adopted, there is no basis for this assumption.

⁷² *LPFM Notice* ¶ 43.

In NAB's Comments, we provided an interference study that showed the potential interference in 60 cities studied by the Commission to determine LPFM's feasibility. Our study combined the interference potential of eliminating both second and third adjacent channel protections and allocating LPFM stations. We studied elimination of both protections because the Commission's promise that a widespread LPFM service can only be achieved by eliminating both second and third adjacent channel restrictions.

Now comes an apparent "compromise" position from LPFM proponents that would allow LPFM stations to operate on third adjacent channels; thus providing "some room" for LPFM stations. Although NAB continues to oppose any elimination of interference protections for LPFM service, we have chosen three cities from the Commission's feasibility study, one from each tier – large market, medium market and small market – and have studied those cities for potential interference if the Commission were to maintain second adjacent channel restrictions, but eliminate third adjacent channel protections. We studied each of the three cities for LP1000 and LP100 stations. The data is represented in Charts 1 and 2.⁷³

⁷³ Interference maps also are provided at Appendix C. These maps mirror the maps submitted by NAB on August 2, 1999. Explanatory text is provided in Volume Three of NAB's Comments.

CHART 1

INTERFERENCE ANALYSIS OF LP1000 STATIONS

**Without 3rd Channel Interference Protection and
With and without 2nd Channel Interference Protection**

City	No. of LP1000s	Interfered Population with Different D/U Ratios			
		FCC Ratios ^a	Clock/Personal ^b	Portable ^c	Home Stereo ^d
Columbus ^e	9	96,786	341,485	503,021	239,187
Columbus ^f	3	119,967	122,321	129,997	128,878
Richmond ^e	19	35,457	145,734	237,551	118,932
Richmond ^f	9	7,145	42,655	112,778	56,517
Midland ^e	16	12,236	21,152	39,702	25,001
Midland ^f	8	4,652	18,680	37,412	27,218

^a Corresponds to D/U ratios for 2nd Adjacent = -40.0 dB and 3rd Adjacent = -40.0 dB

^b Corresponds to D/U ratios for 2nd Adjacent = -15.8 dB and 3rd Adjacent = -26.6 dB

^c Corresponds to D/U ratios for 2nd Adjacent = -10.0 dB and 3rd Adjacent = -17.2 dB

^d Corresponds to D/U ratios for 2nd Adjacent = -21.8 dB and 3rd Adjacent = -22.2 dB

^e Number of LP1000s assumes no 2nd or 3rd Adjacent Channel Interference Protection.

^f Number of LP1000s assumes no 3rd Adjacent Channel Interference Protection.

CHART 2

INTERFERENCE ANALYSIS OF LP100 STATIONS

**Without 3rd Channel Interference Protection and
With and without 2nd Channel Interference Protection**

City	No. of LP100s	Interfered Population with Different D/U Ratios			
		FCC Ratios ^a	Clock/Personal ^b	Portable ^c	Home Stereo ^d
Columbus ^e	37	11,438	113,347	217,324	58,582
Columbus ^f	13	2,316	3,104	7,072	2,840
Richmond ^e	62	10,898	46,689	105,947	40,279
Richmond ^f	24	6,022	14,541	24,565	17,494
Midland ^e	34	14,270	30,089	55,298	29,529
Midland ^f	15	914	3,103	10,033	5,790

^a Corresponds to D/U ratios for 2nd Adjacent = -40.0 dB and 3rd Adjacent = -40.0 dB

^b Corresponds to D/U ratios for 2nd Adjacent = -15.8 dB and 3rd Adjacent = -26.6 dB

^c Corresponds to D/U ratios for 2nd Adjacent = -10.0 dB and 3rd Adjacent = -17.2 dB

^d Corresponds to D/U ratios for 2nd Adjacent = -21.8 dB and 3rd Adjacent = -22.2 dB

^e Number of LP1000s assumes no 2nd or 3rd Adjacent Channel Interference Protection.

^f Number of LP1000s assumes no 3rd Adjacent Channel Interference Protection.

The charts compare the affected populations if the Commission were to eliminate both second and third adjacent channel protections with the elimination of only third adjacent channel protections. As with our Interference Study from our initial comments, the populations are broken down based on the type of radio being used.

While the number of people that could face interference drops in the three cities, by no means does this show that third adjacent channel restrictions are not necessary. There are still thousands of people that would experience new interference. It is important to keep in mind that this analysis has the same limitations as the analyses done in our Comments – the LPFM allocations are based only within the limited “grid” in which the Commission’s feasibility study placed LPFM stations; thus, the actual population affected is understated both because of interference from stations that would be placed outside that grid and due to the use of medians because many radios may perform worse than those tested by NAB.⁷⁴

The Commission should remain focused on the tangible, actual performance of today’s radios. The Commission asked a specific question in the LPFM *Notice* regarding receiver performance and its relationship with second and third adjacent channel protections. NAB’s receiver study showed that for the receivers tested, all categories except automobile radios still had substantial difficulties in rejecting third adjacent channel interference.⁷⁵ In fact, according to our study, home stereos had virtually the same D/U ratio for both second and third adjacent

⁷⁴ See Interference from Low Power FM Stations to Existing Stations, NAB Comments, Volume Three at 12 and 20.

⁷⁵ In regards to automobile radios, NAB refers to a point made by the North Carolina and Virginia Associations of Broadcasters (NCAB/VAB). In their comments, the NCAB/VAB argue that the Commission cannot eliminate third adjacent protections for LPFM because that particular protection matters most in the outer areas of a station’s usage coverage – especially for mobile listeners. NCAB/VAB Comments at 35. While NAB’s testing showed automobile radios were the best at rejecting such interference, the

channel interference.⁷⁶ The Commission has based its ability to eliminate these protections on whether receivers perform better than the Commission assumes. We have proven that they do not.

It also is important to note that in most cases, the number of “available” LPFM stations also significantly drops – almost in half in most cases – if the Commission only eliminates third adjacent channel protections instead of eliminating both second and third adjacent channel protections. Thus, while the interference potential is reduced to some degree, the overall perceived effectiveness of a LPFM service is further reduced because the potential availabilities will not justify implementing the service.

The Commission in this area is hardly writing on a clean slate. The higher levels of second adjacent channel interference that are permitted in the commercial FM band (40 dB D/U ratios as opposed to 20 dB D/U ratios in the non-commercial reserved band) were the product of the Commission’s previous efforts to increase the number of FM stations in Docket 80-90.⁷⁷ In Docket 80-90, the Commission recognized that the distance separations needed to provide interference-free stereo service across stations’ service areas would not permit it to add many

Pickholtz/Jackson study faulted all of the receiver studies for testing car radios in a non-mobile environment. *See* Pickholtz/Jackson Study at 36. Furthermore, the nature of the proposed LPFM service is such that, in addition to possible interference at the edges of existing stations, there will be areas of interference within the service area of full-power station that will resemble a “swiss cheese effect” that would not occur under existing Commission rules.

⁷⁶ The median performance for second and third adjacent channel interference for the component/home stereo category in NAB’s testing was –21.8 and –22.2 dB, respectively. In fact, *the component/home stereo median for third adjacent channel interference was worse than the clock radio and personal radio medians for third adjacent channel interference.*

⁷⁷ *See* Comments of NAB, Volume One at 14.

new allocations,⁷⁸ much as the Commission in this proceeding has understood that maintaining even the existing protections would effectively preclude LPFM service.⁷⁹ The Commission, however, decided to adopt reduced interference protections because “we believe that the potential gains of new service . . . far outweigh the losses of enhanced (stereophonic) service predicted by the commenting parties.”⁸⁰ It stressed that it was accepting this risk to the FM service because the “potential locations for new FM assignments under these rules include a substantial percentage of places with no local service.”⁸¹

Thus, the Commission has already struck a compromise that reduced the quality of FM service in order to foster the construction of new stations. At that time, Commissioner Quello commented that “I’m concerned that the value of a strong secondary service now enjoyed by millions of listeners is allotted a much lower priority than the undocumented need for a new, frequently substandard, FM service.”⁸² The public interest in maintaining the quality of FM service – particularly in light of the near-term arrival of digital satellite radio service – dictates that no further diminution in the interference protections for FM stations be permitted.

It appears that based on the receiver studies submitted, the resulting potential for interference to listeners based on those studies, and the potential for problems for IBOC digital radio – mainly because field testing has yet to be completed – it is not reasonable to assume that

⁷⁸ *Modification of FM Rules to Increase the Availability of Commercial FM Assignments*, 94 FCC 2d 152, 166-67 (1983) [hereinafter Docket 80-90].

⁷⁹ *LPFM Notice* ¶ 42.

⁸⁰ Docket 80-90 at 167.

⁸¹ *Id.* In stark contrast to Docket 80-90, the Commission’s focus in proposing LPFM service is on metropolitan areas where large numbers of FM stations already exist.

⁸² *Id.* at 201 (Dissenting Statement of Commissioner Quello).

third adjacent channel protections are not necessary. The Commission cannot decide that it can eliminate third adjacent channel protections (or even second adjacent channel protections) merely because it believes that interference may already be present due to existing protections that are inadequate and poor performing receivers. LPFM cannot be justified on that basis. Thus, the Commission should not move forward with any loosening of the interference protection criteria in order to provide for LPFM stations.

IV. POLICY ISSUES

A. Existing Broadcasters Continue to Provide Local Service that Cannot Be Replaced With LPFM Stations.

In reviewing some of the LPFM proponents' comments, what became clear was their complete reliance on alleged public demand for new radio service that was claimed by the Commission in its advocacy of this issue. The Commission claims thousands of "hits" on its LPFM webpage and thousands of requests each year regarding how to start a radio station.⁸³ In response to this and its concern regarding consolidation, the Commission has catered to this supply side demand with little consideration of whether the public generally would benefit.

The LPFM proponents' comments do not provide the Commission with any additional basis on which to proceed. Many comments are simply a list of demands for an entirely speculative service.⁸⁴

⁸³ LPFM Notice ¶ 11.

⁸⁴ See e.g. Comments of Metro Detroit Broadcasting in MM Docket No. 99-25, filed May 28, 1999 at 11 –12 (demanding that LPFM stations not be subject to auctions because they are *likely* to make the public airways much more accessible to civic groups, activists, and community leaders)(emphasis added); Comments of ACLU of Massachusetts *et al* at 1 (stating LPFM service has the "*potential* to counteract destructive trends in the current radio market," and the *potential* to enhance diversity and localism)(emphasis added).

LPFM proponents argue that the creation of LPFM will provide local communities with even *more* voices and greater diversity. They insist that the Telecommunications Act of 1996 has homogenized radio stations, or that all radio stations no longer provide local service, having since resorted to satellite programming.⁸⁵ As stated by Prometheus Radio Project, an LPFM proponent, “we see LPFM as an opportunity for people to hear news and music and other programming from people in their own cities, towns and neighborhoods – an opportunity which is currently unavailable.”⁸⁶ Fortunately, that is not the case.

As reflected in the comments filed by the NAB, format diversity has actually increased since passage of the Act.⁸⁷ Further, adding more stations into the already crowded FM band will only spawn a din of confusion bringing a net *decrease* to the service received by the public.

Hundreds of broadcasters filed comments in this proceeding; many gave specific examples of their efforts to bring quality local programming to the communities they serve.

- “Another way Crawford invites the public to its microphones is through the “Talent Search.” Our stations aggressively recruit listeners to come to our studios to host programming during which they can express their views. Related Crawford efforts include the “770 Soapbox,” “Host for a Day,” and “The Dialogue.” Even with our station’s broad reach in mostly major markets, the public is still reluctant to participate.” [*Comments of Crawford Broadcasting Company, In the Matter of Creation of a Low Power Radio Service, MM Docket No. 99-25, April 20, 1999 at 1-2.*]
- “Members of the [New Mexico Broadcasters Association] operate AM and FM broadcast stations throughout the state of New Mexico. For many years, each of these stations has provided a high quality radio service to their respective communities, including news, weather, public affairs, and other non-entertainment programming designed to meet the unique needs and interests of their respective local service areas.” [*Comments of The New*

⁸⁵ See e.g., Comments of UCC, *et al.* in MM Docket No. 99-25, filed August 2, 1999 at 3; Comments of Prometheus Radio Project at 4; NLG Comments at XV; Comments of J. Rodger Skinner at ¶ 4.

⁸⁶ Comments of Prometheus Radio Project at 4.

⁸⁷ NAB Comments at 6.

Mexico Broadcasters Association, In the Matter of Creation of a Low Power Radio Service, MM Docket No. 99-25, August 2, 1999, at 1, 5.]

- “In Wilmington, Ohio, for instance, where we have an AM/FM combo, each being the lowest powered possible service under present broadcast radio licensing standards, our stations are the only broadcast outlets in Clinton County. We are the only radio outlet (and thus the only portable or automobile receivable outlet) for emergency weather information, school closings, agricultural information, local news, community service and organization information, and many other items of direct interest, concern, and need to people of the local community. We provide such information several hours daily, and regularly broadcast, in full, local high school sports events.” [*Comments on Behalf of WFKI-AM and WSWO-FM, Wilmington, OH and KTPK-FM, Topeka, KS*, In the Matter of Creation of a Low Power Radio Service, MM Docket No. 99-25, July 27, 1991, at 1.]
- “We provide hundreds of Public Service Announcements (PSA) each week. We offer free time to local political candidates and conduct live broadcast forums for these candidates. In this hurricane and thunderstorm-rich area, we work closely with our Emergency Managers in local government to keep our listeners informed of emergency weather. We cover and promote local festivals and fairs, school educational and sporting events, charitable events, and more. Our stations carry local high school sports in two counties – every single game, both home and away. We are already performing many of the functions the Commission believes LPFM would provide, and we think most markets in our nation operate in this fashion.” [*Comments of Heartland Broadcasting Corporation*, In the Matter of Creation of a Low Power Radio Service, MM Docket No. 99-25, received August 2, 1999, at 4.]
- “Alabama residents depend upon full-power radio stations for local and regional news, for messages from community leaders, for school information, as well as to keep up with events and day-to-day happenings in their communities. Emergency weather reports and information related to emergencies are widely communicated in Alabama by local radio stations. Lives are saved and injuries averted by such broadcasts. One need only remember the severe hurricanes, floods and tornadoes in the last few years in Alabama to recognize the importance of interference-free reception of local radio stations. Support to communities provided by local full-power radio stations through local public service announcements, charitable promotions, charitable fund raising cannot be overemphasized. Community groups throughout Alabama depend upon and look to Alabama radio stations for support and a means to communicate their message to area residents on a regular basis.” [*Comments of the Alabama Broadcasters Association*, In the Matter of Creation of a Low Power Radio Service, MM Docket No. 99-25, August 2, 1999, at 5.]
- “We could not survive without local news and sports. We are obligated to provide our listeners with up to the minute weather and school and business closing. We volunteer our time at non-profit events. We air public service announcements and do community service programs. Why do we do this? For money? No. Because we could not survive in a small market unless we give our public what they want.” [*Comments of RayMark*

Broadcasting, Inc., In the Matter of Creation of a Low Power Radio Service, MM Docket No. 99-25, July 29, 1999, at 3.]

- “We pride ourselves in on-site owner management, local news, weather, sports reporting service for scores of smaller serving bodies in our listening area, agricultural information, music, entertainment, the list goes on... Why punish the small market broadcaster? Across the country, small town operators provide vital information and localism to our communities.” [*Comments of Maggie Martin, President/General Manager, WGFA-FM & WGFA-AM*, In the Matter of Creation of a Low Power Radio Service, MM Docket No. 99-25, July 28, 1999, at 1-2.]
- “Our station, KIKV, a 100,000 watt FM located in Alexandria, Minnesota, works hard at serving our community with weather warnings, community-oriented PSA’s, weekly community affairs interviews, fund-raising for worthwhile local projects, and other important events in the local community. If there is a worthwhile community project or campaign, we want to help make it a success with our on-air support.” [*Comments of David J. Vagle, General Manager, KIKV-FM*, In the Matter of Creation of a Low Power Radio Service, MM Docket No. 99-25, Received July 28, 1999, at 2 - 3.]
- “I should point out that all of our stations devote hours and hours of air-time to local news, local information, local sports and local programming. We run on average 12,000 public service announcements a year, produce local public affairs programs that run in prime time, Monday through Friday, have won awards both on a statewide (from the Minnesota Broadcasters Association, Minnesota News Network) and national basis (a three time NAB “Crystal Award Winner;” “Service to America Radio Partner Winner”). We take our commitment seriously to local programming and to serving our communities. Low Power FM will force our attention away from what we do best, and make us act as police of the airwaves, protecting our signals so our listeners can enjoy our programming, news and information.” [*Letter from Louis H. Buron, Jr., President/Owner, Omni Broadcasting Company*, In the Matter of Creation of a Low Power Radio Service, MM Docket No. 99-25, received July 28, 1999, at 3-4.]

These comments, and many like them, testify to the same point: broadcasters have and continue to provide meaningful local service. But that could very well change with the establishment of LPFM, all to the detriment of the listening public in many small broadcast markets. LPFM will effectively hobble broadcasters in their efforts to provide quality local programming to their communities.

While the cause of bringing diversity to the airwaves is honorable in purpose, the LPFM proposal is not the way to do it. Local broadcasters *do* serve their local communities, as

established by the record. Shoehorning LPFM stations in to the FM band will increase interference in many cases and threaten to reduce other stations to become what LPFM proponents believe already exist, with no guarantee that LPFM stations will have the capabilities to replace the service that is lost.⁸⁸ To that end, the broadcasters have commented:

- [In the aftermath of Docket 80-90, the FM dial became glutted with radio stations and could ill afford to maintain the level of service their constituencies had become accustomed to.] “Now, many of the stations in our Central Wisconsin market must use satellite programming or automation to remain economically viable. In addition, such community services such as broadcasting high school sports is becoming a thing of the past, as economics will just not allow it. Therefore, the establishment of more radio stations may actually DECREASE service to a community. The Commission should consider QUALITY of existing radio service as important as the QUANTITY of the service.” [*Comments of Wisconsin Rapids Broadcasting, L.L.C., In the Matter of Creation of a Low Power Radio Service, MM Docket No. 99-25, July 16, 1999, at 3.*]
- “... We believe implementation of any low powered radio scheme would be extremely detrimental to existing local stations’ abilities to offer local news, weather, sports programming, emergency and community service information to local areas, and that it would create substantial, and perhaps debilitating harm, to many existing broadcasters who, like us, are providing the kind of local information the Commission has supported over the years, and communities are asking for” [*Comments on Behalf of WFKI-AM and WSWO-FM, Wilmington, OH and KTPK-FM, Topeka, KS, In the Matter of Creation of a Low Power Radio Service, MM Docket No. 99-25, July 27, 1999, at 4.*]
- “We are proud to be broadcasters in rural America and believe our integrity will be at risk if we must focus our efforts and money on engineering difficulties and signal interference instead of providing quality local and community service programming to our listeners. DO NOT ALLOW LOW POWER FM’s to destroy the radio broadcasting industry that has been a major part of my life for so long.” [*Letter from G. Michael Boen, General Manager, WJJY-KTCF, Minnesota, at 3.*]

These comments point to broadcaster’s deep concern that the establishment of LPFM will not only prove antithetical to the FCC’s stated goal of increased diversity and voice in radio, but

⁸⁸ See NAB Comments at Appendix C to Volume One. The SPR Report contained in NAB’s initial comments concludes that it is unlikely that any LPFM station would be able to adequately replace the service provided by full-power stations.

fatally debilitating to their aspiration of bringing quality local programming to America's communities.

Not only are the assertions of LPFM proponents (and indeed the Commission's assumptions in the *Notice*) that the quality and diversity of local radio service have declined without any support in the record, the Commission also has no basis on which to conclude that LPFM stations would behave differently. To the extent that syndicated or other "mainstream" programming characterizes radio service, it reflects the desires and tastes of the radio audience. A radio station without a listening audience – whether it is operated for profit or not – will not long survive. If, as the LPFM proponents contend, full power radio stations have adopted such program formats (and the evidence we submitted of increased format diversity shows that this is not the case), neither they nor the Commission have explained why the same economic forces would not impel LPFM stations to make similar choices, particularly if the Commission would limit local ownership of LPFM stations to deny them the benefits that can be obtained by offering multiple formats. The Commission cannot simply posit that LPFM stations would operate in a particular fashion without an economic analysis supporting its assumption. Therefore, the Commission must disregard LPFM proponents' unsupported claims that they will provide format diversity not now available.

B. Allocations, Applications, and Enforcement Pose Virtually Insurmountable Hurdles for the Proposed LPFM Service.

1. The Commission fails to provide realistic proposals regarding allocations and market definitions.

In the *Notice*, the Commission does not propose to allocate LPFM stations any differently than full-power stations, if such LPFM stations are authorized. It believes the proposed LP-1000 level could provide service for "a significant portion of many urban or suburban areas, and most

medium-size or small rural communities.”⁸⁹ The Commission foresees LP-100 stations could “meet the demand of people who would like to broadcast affordably to communities of moderate size (whether standing alone in rural areas or as part of a larger urban area).”⁹⁰ The Commission also leans toward authorizing LPFM stations on minimum distance separation criteria,⁹¹ and proposes to accept electronically filed applications for channels meeting such criteria.⁹²

As part of its mandate, the Commission is required to distribute licenses “among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.”⁹³ The Commission takes its allocation of licenses to communities very seriously. The Allocations Branch requires detailed evidence that the “community” expected to be served by a proposed station is in fact a community. Proponents of an allotment must show a geographically identifiable population grouping.⁹⁴ One indication could be “whether the residents function as and conceive of themselves as residents of a community, around which their interests coalesce.”⁹⁵ A nexus between the political, social and commercial organizations and the community in question must be shown for allotment purposes.

Due to the fact the Commission proposes to place LPFM stations among existing full power stations, it is unlikely that any justification could be made that LPFM stations should be

⁸⁹ *LPFM Notice* ¶ 24.

⁹⁰ *Id.* ¶ 30.

⁹¹ *Id.* ¶ 40.

⁹² *Id.* ¶ 91.

⁹³ 47 U.S.C. § 307(b).

⁹⁴ *See* Gretna, Marianna, Quincy and Tallahassee, Florida, 6 FCC Rcd 633 at ¶ 5 (1991).

⁹⁵ *Id.* (citing *Mighty-Mac Broadcasting Co.* 58 RR 2d 599, 603(1985); *North Naples, Florida*, 41 RR 2d 1549, 1551 (1977)).

treated differently than full power stations when determining whether there is a “community” to be served. Thus, it would appear that individuals seeking allotments to serve specific neighborhoods or the “geographically compact areas” envisioned by the Commission’s proposal would have to meet the standard that establishes that a “community” exists for a channel to be allocated. This places a huge burden on the Commission. In many instances – particularly with LPFM stations – defining a “community” may take extra evaluation by Commission staff.

This issue is further complicated by the Commission’s lack of specific proposals regarding markets. The proposed LPFM service would simply be an extension of FM service because there is no characteristic that makes it a distinct, unique service from existing FM stations. Thus, existing market definitions would be one appropriate measure from which to determine allocations, assignments and compliance with any ownership restrictions. However, the Commission does not address this specifically within the *Notice* and asks for comment on the appropriate definition of “market” or “community.”⁹⁶

The Metro Detroit Broadcasting Corporation (“Metro Detroit”) suggests that the Commission reduce the area included within the “community of license” for LPFM.⁹⁷ Although it supports the LPFM service, Metro Detroit’s comments supports NAB’s contention that these proposed LPFM stations have no hope of economic viability in the first place; thus, the Commission is proposing a service that can only lead to failure.

Absent allowing more than one LPFM station per “market” or “community,” Metro Detroit suggests that LPFM stations have a smaller “community” definition because “such would permit Low Power FM stations to more effectively target finite audiences that are spread out

⁹⁶ *LPFM Notice* ¶ 57.

⁹⁷ Metro Detroit Comments at 7.

across various locales.”⁹⁸ Specifically, Metro Detroit proposes that the Commission “subdivide” existing communities into smaller coverage areas.⁹⁹ This type of division is necessary because Metro Detroit recognizes that “the ability to develop a niche by targeting specific groups will be crucial to the viability of this new service.”¹⁰⁰

This is sound logic because it is exactly the point that NAB made in our Comments – niche programming can only be successful when it is distributed in a wide enough area to ensure enough people that are interested can receive the programming.¹⁰¹ But, as evidenced in Metro Detroit’s comments, the instant proposal will not meet the goals established by the Commission. While new entrants and diversity are laudable goals, it should not come at the expense of existing broadcasters by increasing interference, nor should it be attempted under the guise of a proposal that has no hope of reaching those goals.

In addition, the increased administrative burden on the Commission in defining new markets – when added in with the other administrative acts required by the proposal – would ensure frustration, complication and failure of the proposed LPFM service. Market and community definitions play an important role in determining if applications are mutually exclusive. Additionally, these definitions would have to be incorporated into any application process that the Commission would devise and implement for LPFM service, if adopted.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 6.

¹⁰¹ *See* NAB Comments at 57.

2. The Commission's proposal to accept electronic applications will not alleviate serious concerns.

The Commission has determined that it would have to establish an electronic filing system for applications in order to decrease burdens and attempt to avoid some mutual exclusivity. Unfortunately, the Commission's plan is too speculative. It admits that, although it may be technically possible to devise a computer program that will assist in any application process, such a system has not been created, tested or proven.¹⁰²

NAB expressed concern in the Biennial "Non-Technical" Streamlining proceeding regarding mandatory electronic filing proposals.¹⁰³ In order for such a system to function, the Commission had to re-structure all of its forms to ask "yes/no" questions. Applicants then must certify that their answers are correct based on the completion of worksheets designed to assist in the answering process.¹⁰⁴ While one benefit of this streamlined process is that it is more efficient for both the Commission and filers, one potential drawback is a reduction in information collected by the Commission that may impact the efficient and effective use of the spectrum.

This drawback is magnified when considering the LPFM proposal. The Commission admits it would anticipate thousands of applications. Accepting and verifying these applications would take a Herculean effort, even with the benefit of an electronic system. Additionally, while the Mass Media Bureau has instituted a "mandatory electronic filing" policy for existing applications and forms, the electronic system that will accept the forms has yet to be fully implemented.

¹⁰² *LPFM Notice* ¶ 95.

¹⁰³ Comments of the NAB in MM Docket No. 98-43 at 11 – 12 (filed June 16, 1998).

¹⁰⁴ *See e.g.* Form 301 at <<http://www.fcc.gov/forms>>. This is the first form that was released in the new format designed for online filing.

The Commission's anticipated use of simple electronic applications would exacerbate the interference risks from LPFM service. With only a simple, electronic application in which a series of "yes/no" questions would be answered by applicants who may have little if any technical expertise, the Commission will have no basis for determining the potential interference that would be created by a particular LPFM station. For example, the Commission's feasibility study located a number of LPFM stations near major commuter routes in many of the 60 markets the Commission studied. Without a specific engineering proposal, and particularly if the Commission does not require LPFM stations to use type-accepted equipment,¹⁰⁵ a significant loss of service could occur even with automobile radios. Moreover, without a specific engineering proposal from an LPFM applicant, other stations would not be able to assess the risks of interference. Similarly, the Commission would have little basis on which to argue that a station causing undue interference was violating the terms of its license.

3. While the Commission has stated it does not wish to implement an LPFM service that will harm existing broadcasters, it lacks the ability to achieve that goal through enforcement.

The issue of enforcement remains a valid and substantial concern for most existing broadcasters. Were the Commission to ignore the technical studies presented to it and implement a LPFM service, not only would listeners be faced with interference based on the faulty placement of LPFM stations, the situation would give rise to unchecked abuses and overall continued degradation of the FM service.

As pointed out by the Association of Federal Communications Consulting Engineers (AFCCE), mere transmitter certification does not ameliorate any potential for abuse – abuses that would require enforcement. The AFCCE points out that while certification is a must in any case,

¹⁰⁵ *LPFM Notice* ¶ 51; *see* NAB Comments, Volume One at 69.

it does not preclude modifications “by someone desiring to sound louder or to cover more area.”¹⁰⁶ NAB agrees wholeheartedly with this point.

While many LPFM proponents promise that they are not pirates now, or would abide by some regulations (as long as the regulations are within their control),¹⁰⁷ many of these proponents do not believe that any interference is possible.¹⁰⁸ There would be nothing preventing any of these individuals from boosting power, moving transmitters or altering any function of any LPFM license provided to them, if an LPFM service is implemented because the Commission does not have the resources to adequately control any LPFM service.

The Commission does not have to learn from history, for it can look to a modern day example. In 1992, Australia implemented its Low Power Open Narrowcasting (LPON) Service.¹⁰⁹ This service is remarkably similar to the FCC’s LPFM proposal. The stations have power levels of 10 watts in rural areas and one watt in residential (i.e. urban) areas. LPON stations must be targeted to special interest groups, intended for limited areas or events, or provide non-English programming. Typical LPON stations provide information for tourists, snow reports, real estate information, shopping information, religious programming or Aboriginal language programming.

¹⁰⁶ Comments of the AFCCE at 15.

¹⁰⁷ See Amherst Alliance comments at 62; National Lawyers Guild comments at XVII.B.5.

¹⁰⁸ LPFM proponents funded and supported the study done by the National Lawyers Guild. That study concluded that second and third adjacent channel protections were not necessary; thus the interference issue does not exist. NLG Comments at XII.D. However, NAB’s experts have soundly rebutted any contentions that the NLG study proves adjacent channel protections are unnecessary for LPFM. See Pickholtz/Jackson Report at 28.

¹⁰⁹ Attached as Appendix D is the Australian Communications Authority’s description of LPON service.

Some differences between the Australian service and the LPFM proposal also exist. LPON stations operate only on 87.6, 87.8 and 88.0 Mhz. LPON stations must protect full-power stations to the third adjacent channel and to TV channel 3 by complying with spacing restrictions. It is important to note that Australia only has 220 full-power, commercial radio stations¹¹⁰ – making implementation and control much easier because there is less congestion and fewer overall stations to regulate. However, as easy as this may seem, the Australian Communications Authority (ACA), the entity that enforces the LPON regulations, recently released a “Discussion Paper and Invitation to Comment” that shows that its intentions with LPON are not being realized.¹¹¹

The main problem for the ACA is that of the 200 LPON licensees, 10 licensees hold over 50% of the licenses, and 65% of these licenses are not being used to provide a service. The “hoarding” issue is not the only problem with the Australian LPON service. The ACA has conducted an audit and found that over the four years since the service was started, many LPON operators have moved away from the information service format and are “becoming more like commercial broadcasting services in character.”¹¹² Additionally, field audits indicate that a “large number of services are exceeding the maximum allowable field strength.”¹¹³ The ACA

¹¹⁰ See <http://www.aba.gov.au/what/broplan/lists/com_rad.pdf> for a list of Australian Commercial Radio Licenses.

¹¹¹ The Australian Communications Authority paper is attached as Appendix E [hereinafter ACA paper].

¹¹² ACA paper at 2.

¹¹³ *Id.*

has begun issuing notices to LPON operators to “cease providing unlicensed commercial radio broadcasting services.”¹¹⁴

The Australian experience is a useful prediction of the enforcement problems that the Commission would face with LPFM on a much larger scale than the Australian authorities face. The FCC has over 12,000 radio stations to regulate. It proposes to allow LPFM stations anywhere that they can fit in, both geographically and across the radio dial, and at higher power levels than allowed in Australia. The FCC’s goals are the same as Australia’s, and the result will likely be the same. As NAB has pointed out in our Comments, the economic viability of these LPFM stations would be very minimal if operated at the proposed levels. To further complicate the situation, many LPFM proponents advocate a purely non-commercial service. Couple the limited service area (both by virtue of the low power levels and by the potential for interference from full-power stations) and the inability to raise funds, many LPFM operators may choose as the Australian LPON operators – to boost power.

The Commission has no present ability to monitor and control thousands of LPFM stations operating in a manner outside of any authority that may be given to them. Before it adopts any LPFM service, the Commission must consider its ability to make sure that the rules it adopts can be enforced, and that the radio environment does not disintegrate into chaos while an over-taxed Enforcement Bureau seeks to stem the tide of interference. If the Commission allows the creation of an LPFM service without adequate plans to enforce its rules, it would place at risk the control over spectrum use that was the reason modern communication regulation began in 1927.

¹¹⁴

Id.

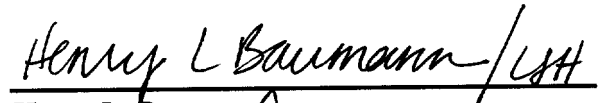
V. CONCLUSION

The Commission began this proceeding by hanging its LPFM hat on unproven technical assumptions. It proposed the LPFM service without thoughtful consideration of all of the issues that must be addressed and overcome. The Commission should not move forward with its proposal, not only for the technical reasons regarding interference to existing stations and their listeners, but also for all of the potential issues that were not properly assessed by the Commission before proposing the service. NAB remains opposed to the proposals to establish any LPFM service. The Commission must consider all of the technical information submitted and the rebuttal reports provided herein and conclude that the proposed LPFM service is unfeasible.

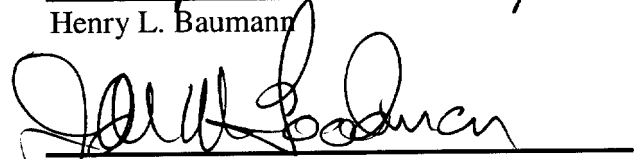
Respectfully Submitted,

**NATIONAL ASSOCIATION OF
BROADCASTERS**

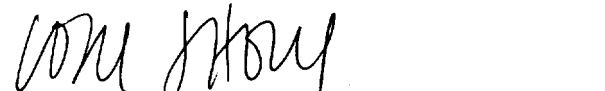
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